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ABSTRACT

In the wake of the United States Surgeon General's report which studied the impact of televised violence upon children and warned broadcasters that corrective action must soon be taken, the author explores the available legal channels for the reduction of violence on children's television. In an overview examining the history of violence in broadcasting, she traces and discusses the concern expressed by some broadcasters, the FCC, and Congress. As early as 1934 the FCC found "blood and thunder" children's radio programs contrary to the public interest. Congressional concern has been activated since 1954. The findings of various committees and commissions indicating a causal relationship between television violence and aggressive anti-social child behavior, however, have been repeatedly dismissed by the broadcast industry as inconclusive. The author concludes that failure of the broadcast industry to self-regulate the violent content of children's programs points to a need for immediate remedial action. (RN)

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LEGAL REMEDIES FOR THE REDUCTION OF VIOLENCE ON CHILDREN'S TELEVISION

Gloria S. Brundage

Dean Burch[1], Chairman of the Federal Communications Commission, told broadcasters in 1970 that America's tangible hope of immortality are the children.

Burch noted that Americans spend more than all of the rest of the world combined on the education of its children. However, before these children graduate from high school, they spend 15,000 hours a day watching television compared to the 11,000 hours they spend in school.

"It is, I believe, fair to ask whether broadcasters, operating on public channels as public trustees, have fully met their responsibilities to children," Burch added.[2]

In the wake of the Surgeon General's report this spring, "Television and Growing Up: The Impact of Televised Violence," the responsibilities of broadcasters to children have been made clear.[3] In Dr. Steinfeld's[4] interpretation of the report before the Senate Communications Subcommittee, the Surgeon General declared: "It is clear to me that the causal relationship between televised violence and antisocial behavior by children is sufficient to warrant appropriate and immediate remedial action."

"My professional response today is that the broadcasters should be put on notice," the Surgeon General advised. In answer to press reports that intimated the study would discount the link between TV violence and aggressive behavior in children, Steinfeld said that while data will never be clear enough for all social scientists to agree on a tight simple statement of cause-and-effect, still "there comes a time when the data are sufficient to justify action. That time has come."

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Before suggesting the appropriate and immediate remedial action the Surgeon General has requested, there should be an examination of the history of violence in broadcasting and the expressed concern of the broadcasters, the FCC and Congress.

The FCC[6] found "blood and thunder" children's radio programs contrary to the public interest soon after it was established in 1934. The public complained that the credulousness of the child caused some advertisers and broadcasters to take advantage of them. Children's programs were "under fire to such an extent that broadcasters became discouraged, with the result that the amount of time devoted to young people on the air was greatly decreased."[7]

By 1939, both the National Broadcasting Company[8] and the National Association of Broadcasters[9] adopted specific standards for children's programs. However, most of these standards were to protect the child rather than raising the quality of the programs.

In 1935, FCC Chairman Prall[10] warned broadcasters to "cut down on their blood and thunder type of programming or face the consequences." By 1937, FCC Commissioner Payne, after receiving "an unusually large amount of mail from parents who were upset over the amount of violence used in the afternoon children's serial programs," stated that the FCC would "take immediate steps to curb the trend toward more and more violent action used in children's programs."[11]

Such threats were never carried out officially by the FCC, although at least one hearing was held in 1939. And in 1939, the FCC released a memorandum to broadcasters containing a list of program materials that seemed undesirable. Included in that list were "programs depicting torture

and excessive suspense in children's programs."[12] By 1945, the National Association of Broadcasters said that the average child spent about fou teen hours a week listening to the radio.[13]

The National Association of Educational Broadcasters[14] took the first public examination of television programs for children in the early 1950s. They found that violence and horror comprised approximately ten percent of all programming time. Shayon[15] first called parents' attention to the effects of television on children in 1951.

Maccoby[16] described the contributions that television programs of violence made to juvenile delinquency to the Senate Committee on the Investigation of Juvenile Delinquency in the United States. The committee, headed by Senator Estes Kefauver, launched hearings in response to the mounting concern of parents and educators over the amount of time devoted to shows containing crime, brutality, sadism, and sex. The testimony caused the committee to issue a report indicating that it felt television violence could be potentially harmful to young viewers.

However, industry spokesmen said that the research evidence on the effect of violent portrayals on children was inconclusive. While testifying before the Juvenile Delinquency Committee, Harold E. Fellows[17] promised to survey the impact of television programming on children. The NAB did change its Television Code to read as follows:

> Responsibility Toward Children
> 1. The education of children involves giving them a sense of the world at large. Crime, violence and sex are a part of the world they will be called upon to meet, and a certain amount of

> proper presentation of such is helpful in orienting the child to his social surroundings. However, violence and illicit sex shall not be presented in an attractive manner, nor to an extent such as will lead a child to believe that they play a greater part in life than they do. They should not be presented without indications of the resultant retribution and punishment.[18]

The survey was never done by the NAB. However, the violence increased so measurably that Leroy Collins, the new NAB president was asked:

> Dr. Wilbur L. Schramm, Director of the Stanford Institute of Communications Research, and a recognized expert in the field of behavioral research, stated in testimony before the subcommittee that the amount of extremely violend programs which we have on TV at the present time is just too dangerous to go on. In light of this situation, has the NAB sponsored or taken part in any research in this area? Does it plan any such activity in the future?[19]

Collins said: "We are moving significantly in this area now. At a meeting of our joint radio and television board of directors last week approval was given to proceed with the initial planning of an NAB research and training center in association with one of the leading universities in the nation."[20] Collins also told the Chairman, Senator Dodd, that CBS was doing the survey that had been planned by NAB and that it would be published that very year. The survey was not published until 1953.

In 1962, FCC Chairman Newton Minow called children's programs "timewaster shows"[21] when he spoke to the NAB convention. "We all know that the potential of television to help or hurt our children is enormous. We know that television occupies more of a child's time each year than school, or than church. And in some homes, children spend more time with their TV set than with their parents," Minow told the broadcasters.[22]

By 1962 Senate hearings, action/adventure shows had climbed from a minority level of programming to a majority, with percentages ranging from a low 54 percent to 86 percent. Head[23] examined 209 programs for a thirteen-week period, finding about four acts of aggression and moral transgression per program. "The crime-aggression ratio was highest for children's programs where the most common act was physical assault."[24] The broadcasting industry co-sponsored the Joint Committee for Research on Television and Children.

When the promised CBS study was finally published in 1963, the author expressly stated: "The present study provides no direct evidence on the effects of television on children. Our information refers entirely to parents' beliefs, attitudes, and behavior with respect to the television set vis-a-vis the child."[25]

Surveys to the committee in 1964 caused the subcommittee to comment: ". . . the extent to which violence and related activities are depicted on television today has not changed substantially from what it was in 1961 and remains greater than it was a decade ago. Further, violence and other antisocial acts occur during periods in which the children's audience is a large one."[26]

Senator Dodd's committee reported that a relationship had been established between televised crime and violence and antisocial attitudes and behavior among juvenile viewers. The committee said it seemed clear that television "has been functioning as what an informed critic has termed 'a school for violence'."[27]

Created by President Johnson in 1968 to find out if the seeds of violence are nurtured through broadcasting, the National Commission on the Causes and Prevention of Violence concluded that violence on television did encourage real violence, especially among the children of poor, disorganized families.

The Commission recommended (1) a reduction in programs containing violence, and if not, scheduling programs containing significant violence only after 9 p.m. and (2) elimination of violence from children's cartoon programs. It called for intensified research by the networks into the impact of television and permanent Federal financing for the Public Broadcast Corporation. The Commission's report provided a valuable synthesis of previous research as well as adding a new content analysis of television programming and attitudes of television violence. The Commission concluded:

> In the final analysis, present network standards on portrayals of violence are weak because they appear to be based on little more than a fear of losing viewers. Little consideration is given to the issue of whether violence is indeed necessary to maintain dramatic tension in the resolution of conflict, and only cursory attention is paid to the larger question of reducing the number of violent programs in network entertainment schedules.[28]

"Sesame Street," with an audience of six million daily out of the 12 million 3-to-5-year olds has proven the networks' rating games wrong.[29] Now the very young, who have difficulty comprehending the contextual setting in which violent acts are depicted, were given a choice to respond to another type of program. The Surgeon General's study pointed out how the child under six gave television his full attention. The report stated:

> A young child's reaction to television is potentially quite different from that of an adult. A child has only a limited range of past experience and does not have a well-established set of conceptual categories for clarifying his perceptual experiences. . . .

> The thinking of the three-and four-year-old is not logic as the adult sees it. At that age children are still free-associating through the day. The evolution of their thinking processes has not yet reached the stage where they voluntarily or involuntarily classify, sort, select, and organize information except in very concrete and immediate terms.[30]

Congressional concern following the report of the National Commission on the Causes and Prevention of Violence resulted in an analysis[31] of the character of violence in literature and violence as expressed through television. The Subcommittee on Communications said that there are essential and important differences between the violence in the great literature and violence as manifested on the television screens of contemporary America. To the Subcommittee, television violence lacks the proportion and distance that great works of literature almost always possess. Television shows fail to develop character identification but present the audience with only a sense of violence devoid of all humanization, the effect of which is to glorify the violence, completely ignoring the fact that human beings are doing violence to other human beings. The Subcommittee stated: "Good literature emphasizes cause and effect; bad literature or bad television emphasizes the thing in itself--violence, in this case, for its own effect."[32]

The Subcommittee report said that the issue is not the presence of violence. "The issue is what is done with it--done with it by the writer, done with it by the society, done with it by the people."[33]

The issue is what the 81,825,000 available children watching television upward to six hours a day, especially the impressionable 40 million under twelve, will do with the violence--now or as adolescents.

In the Senate Subcommittee hearings following the surgeon general's report that there is a casual relationship between TV violence and aggressive behavior of children, the major television networks said that they are making efforts to eliminate needless violence from TV programs. "We do not pledge to eliminate all violence from television because we do not believe that to be a desirable course,"John A. Schneider, president of Columbia Broadcasting System, said.[35] Judging from the agreement with only portions of the report and from the performance since 1954, there is a question concerning self regulation by the industry.

"For 'by their fruits shall ye know them," the Court had said in the KFKB Broadcasting Association case[36]. Dr. Brinkley's operation of his station had been found inimical to the public health and safety, and for that reason, not in the public interest. The Court upheld the Federal Radio Commission:

> It is apparent, we think, that the business is impressed with a public interest and that, because the number of available broadcasting frequencies is limited, the Commission is necessarily called upon to consider the character and quality of the service to be rendered. In considerating an application for a renewal of a license, an important consideration is the past conduct of the applicant, for 'by their fruits shall ye knew them.' Matt. VII; 20. Especially is this true in a case like the present, where the evidence clearly justifies the conclusion that the future conduct of the station will not differ from the past.[37]

Two instances of violence affecting children physically have been reported. Pediatricians, at two Air Force bases, were puzzled by a large group of children, aged three to twelve, who suffered from chronic fatigue, headaches, loss of sleep, upset stomachs, and vomiting.[38] The National Center for Health Statistics reported that a survey of the

parents of approximately 7,000 children between the ages of six and 11 years indicated that the sleep disturbances of more than one out of four children were considered by the parents to be caused by television violence.[39]

The Secretary of HEW told Congress in mid-1967 that the warning on cigarette packages "does not have any impact on children and young people exposed to daily advertising." More than 1.8 exposures were made among children aged 2-11. Children were afforded protection from cigarette advertising on the broadcasting media.

Action for Children's Television's representative pointed out that in children's programs for over 20 years, the broadcast industry has been unable to set up its own standards and to adhere to them. The organization is now proposing standards for the industry.[40]

In June, 1968, John F. Banzhaf III, known for his success in securing equal time for anti-smoking commercials, filed with the Commission a petition to revoke the license of WNBC-Tv charging, among other things: "Excessive violence, crime, sadism, et cetera, especially in programs presented for, and viewed by young children."[41] However, on March 20, 1969, the FCC denied the petition, the majority suggesting in a footnote that these issues should be raised at the appropriate time by a petition opposing renewal.

Banzhaf reported to the Senate Subcommittee on Communications that the FCC had taken no action on his petition. He placed the responsibility for television violence on Congress:

> Senator, but Congress, in its wisdom, and this committee particularly, have kept the networks which are responsible for a great majority of violence on the air, beyond any direct control and challenge, and they can be reached only by challenges to their owned and operated stations, and so far the Commission has been completely unresponsive in this regard.[42]

The analogy between violence and obscenity strains belief; however the U.S. Supreme Court considered the regulation of violence once in 1948 in Winters v. New York. In that case, a statute purporting to regulate printed matter "devoted to the publication and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime" was overturned. The six members of the court who gave the majority opinion after three arguments did not reach the underlying issues. The writer of the opinion tried to avoid suggesting that no such statute could succeed. Justice Reed wrote:

> We recognize the importance of the exercise of a state's police power to minimize all incentives to crime, particularly in the field of sanguinary or salacious publications with their stimulation of juvenile delinquency.[43]

The amenability of violence in television content is, with the Surgeon General's report, supported by clear evidence of violence effects upon children. Greater regulation on behalf of children has been sustained under the first amendment. If a proposal to end violence can strike a balance against the first amendment and in favor of regulation such as "clear and present danger," then perhaps the regulation suggested in the Winters case might succeed. Justice Holmes might have indicated the protection needed:

> The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils Congress has a right to prevent. It is a question of proximity and degree.[44]

Barron asks: "Can a distinction be made between the regulation of violence in broadcasting and the abolition of cigarette advertising. Certainly there exists at least a plausible basis for arguing that the social ills of the former are as serious as the health hazards of the latter."[45]

In view of the public health basis uniquely authenticated by official action of the Surgeon General's report, the FCC does have authority to act concerning violence under the public interest standard set out in Sections 303, 307, 308, 309, and 315 of the Communications Act. Under the Administrative Procedure Act, the Commission's authority to act is really a duty to act.

Children under twelve have been given special consideration in recent obscenity cases concerning the dissemination of allegedly obscene material to children.[45] Protection of children receives special consideration.

The failure of self-regulation and the need for protection of the children points to appropriate and immediate remedial action. Whether this can be accomplished through FCC ruling, Congressional statute or the courts, the precedents have been established. It is the analogy that may have to be strained.

FOOTNOTES

[1] Dean Burch, Chairman of the Federal Communications Commission, Speech before the National Association of Broadcasters Convention, April 8, 1970.

[2] Ibid.

[3] Surgeon General's Scientific Advisory Committee on Television and Social Behavior, "Television and Growing Up: The Impact of Televised Violence. Washington, D. C.: Government Printing Office, 1972.

[4] New York Times, March 22, 1972, p. B1.

[5] Ibid.

[6] Federal Communications Commission, Second Annual Report, p. 180.

[7] Howard Rowland, I. Keith Taylor and Norman Woelfel, "Criteria for Children's Radio Programs," Evaluation of School Broadcasts. Columbus, Ohio: Ohio State University, 1942, p. 81

[8] National Broadcasting Company, Standards for Children's Programs, 1939.

[9] National Association of Broadcasters, The Radio Code, 1939.

[10] New York Times, March 31, 1962, p. 26.

[11] Newsweek, Nov. 8, 1937, pp. 26-27.

[12] Variety, March 8, 1939.

[13] National Association of Broadcasters, "Program Patterns for Young Listeners," 1945.

[14] The National Association of Educational Broadcasters, Surveys of television content in Losangeles, New York, New Haven, and Chicago, 1951.

[15] Robert Lewis Shayon, Television and Our Children. New York: Longmans, Green and Co., 1951.

[16] Eleanor Maccoby, Statement to U.S. Senate Committee on the Judiciary, Investigation of Juvenile Delinquency in the United States, Television and Juvenile Delinquency, 84th Congress, 2d session, January 16, 1956. Report No. 1466.

[17] Ibid.

[18] National Association of Radio and Television Broadcasters, "The Television Code," Third Edition, July, 1956, p. 3.

[19]U.S. Senate Committee on the Judiciary, Investigation of Juvenile Delinquency in the United States, Television and juvenile delinquency, 86th Cong.

[20]Ibid.

[21]Chariman Newton Minow, Federal Communications Commission (Mimeo) 1962.

[22]Ibid.

[23]Sidney W. Head, "Content Analysis of Television Drama Programs," Quarterly of Film, Radio and Television, vol. 9, 1954, pp. 175-194.

[24]Ibid.

[25]Gary Steiner, The People Look at Television, 1963, p. 83.

[26]U.S. Senate Committee on the Judiciary, Effects on young people of violence and crime portrayed on television, Part 16 of Investigation of Juvenile Delinquency in the United States, July 30, 1964, p. 3731.

[27]Ibid.

[28]National Commission on the Causes and Prevention of Violence, Violence and The Media. Washington, D.C.: U.S. Government Printing Office, 1969, p. 613.

[29]The Washington Star, March 8, 1970, p. E-4.

[30]Surgeon General's Scientific Advisory Committee on Television and Social Behavior, "Television and Growing Up: The Impact of Televised Violence. Washington, D.C.: Government Printing Office, 1972, p.57.

[31]Subcommittee on Communications, "Analysis of the Character of Violence in Literature and Violence as Expressed Through Television." Washington: Government Printing Office, 1969.

[32]Ibid.

[33]Ibid.

[34]TV/Radio Age, Vol. XIX, No. 12 (January 24, 1972).

[35] Milwaukee Sentinel, March 24, 1972, p. 18, Part 2.

[36] KFKB Broadcasting Association v. Federal Radio Commission, 47 F. 2d 670.

[37] Ibid.

[38] Time, November 6, 1964, p. 76.

[39] "Television and Growing Up, p. 99.

[40] U.S. Senate, Communications Subcommittee of the Committee on Commerce, Hearings on S. 2004, 91st Cong. 1st Sess, p.587.

[41] Ibid., p. 661.

[42] Ibid., p. 662.

[43] Winters v. New York, 333 U.S. 507.

[44] Schenck v. United States, 249 U.S. 47

[45] Ginsberg v. New York, 390 U.S. 629 (1968).